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Proceeding No.	91195327
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Filing Date	03/11/2014
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91195327



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91195327
Party	Defendant Hard Candy, LLC
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Date	03/10/2014
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Party	Defendant Hard Candy, LLC
Correspondence Address	GABRIEL GROISMAN COFFEY BURLINGTON 2699 SOUTH BAYSHORE DRIVE PENTHOUSE MIAMI, FL 33133 UNITED STATES ggroisman@coffeyburlington.com, nsalas@coffeyburlington.com
Submission	Testimony For Defendant
Filer's Name	Gabriel Groisman
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Date	03/10/2014
Attachments	Depo of Jerome Falic.pdf(359549 bytes) Opp. Ex. A.pdf(258350 bytes) Opp. Ex. B.pdf(191159 bytes) Opp. Ex. C.pdf(75748 bytes) Opp. Ex. D.pdf(316605 bytes) Opp. Ex. E.pdf(314855 bytes) Opp. Ex. F.pdf(80702 bytes) Opp. Ex. G.pdf(300669 bytes) Opp. Ex. H.pdf(254890 bytes) App. Ex. 1.pdf(227051 bytes) App. Ex. 2.pdf(227224 bytes) App. Ex. 3.pdf(305010 bytes)

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

HardCandy Cases, LLC,

Opposer,

v.

Hard Candy, LLC,

Applicant.

In Re: Application Serial Nos. 77700559
and 77700557

For the Marks: Hard Candy
Published in the Official Gazette: 02/16/09

Opposition No. 91195327

**APPLICANT HARD CANDY, LLC'S NOTICE OF FILING
DEPOSITION TRANSCRIPT AND EXHIBITS**

Applicant, Hard Candy, LLC ("Hard Candy" or "Applicant"), by and through undersigned counsel and pursuant to 37 CFR §2.123(h), 37 CFR §2.125(c), and 37 CFR §2.126(b), hereby gives notice of filing the transcript from the testimony deposition of Jerome Falic dated February 12, 2014, along with Opposer's Exhibits A-H and Applicant's Exhibits 1-13.

Respectfully submitted,

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03-11-2014

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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a true and correct copy of the foregoing was served on
this 10th day of March 2014, by email and by First Class Mail upon:

Stuart J. West
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3rd Floor
1255 Treat Blvd
Walnut Creek CA 94597
Fax Number: 925.944.9598

/s/ Gabriel Groisman

1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

3 In Re: Application Serial Nos. 77700559 and 77700557 for
4 the Marks: Hard Candy
5 Published in the Official Gazette: 02/16/09

6 Opposition No. 91195327

7
8 HardCandy Cases, LLC,

9 Opposer,

10 -vs-

11 Hard Candy, LLC,

12 Applicant.

13
14 DEPOSITION OF

15 JEROME FALIC

16 Wednesday, February 12, 2014
17 1:21 p.m. - 3:42 p.m.

18 2699 South Bayshore Drive, Penthouse
19 Miami, Florida 33133

20
21 Reported By:

22 Sharon Ambersley, Certified Court Reporter
23 Notary Public, State of Florida
24 Network Reporting Corporation
25 Phone: 888.358.8188
 305.358.8188

- - -

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7 On behalf of the Applicant:

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13 I N D E X

14 WITNESS: DIRECT CROSS REDIRECT RECROSS

15 JEROME FALIC

16 By Mr. Kaplan 4

17 By Mr. West

- - -
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P R O C E E D I N G S

- - -

Deposition taken before Sharon Ambersley,
Certified Court Reporter and Notary Public in and
for the State of Florida at Large, in the above
cause.

- - -

Thereupon,

Jerome Falic

Having been first duly sworn or affirmed, was
examined and testified as follows:

DIRECT EXAMINATION

MR. KAPLAN: Okay. We're on the record. I'm
Kevin Kaplan from Coffey Burlington for the
Applicant, Hard Candy, LLC.

MR. WEST: Stuart West from West and
Associates appearing on behalf of Opposer for
HardCandy Cases.

BY MR. KAPLAN:

Q Mr. Falic, can you state your name, please,
and spell it for the record?

A Jerome Falic, J-E-R-O-M-E, last name, F as in
Frank, A-L-I-C.

Q Mr. Falic, what is your position at Hard
Candy, LLC?

1 A I'm the chief executive officer.

2 Q I may refer to Hard Candy, LLC during the
3 course of this testimony as Hard Candy or the company.
4 Is that okay with you?

5 A Yes.

6 Q And where did you attend college?

7 A University of Miami.

8 Q Let me ask you a little bit about the
9 background of Hard Candy, LLC. When was the company
10 formed?

11 A Approximately five or six years ago.

12 Q Who are the founders of the company?

13 A My brothers and I.

14 Q What are your brothers' names?

15 A Simon and Leon.

16 Q What is the business of Hard Candy, LLC?

17 A Hard Candy, LLC develops and licenses various
18 products.

19 Q And has that been the business of Hard Candy,
20 LLC since it was formed?

21 A Yes.

22 Q There is also a trademark called Hard Candy;
23 is that correct?

24 A Correct.

25 Q How long have you been involved with the

1 trademark?

2 A We bought the trademark approximately ten or
3 12 years ago.

4 Q Who is involved now in running the Hard Candy
5 company?

6 A Besides myself?

7 Q Correct.

8 A Neal Seideman.

9 MR. WEST: I'm sorry. Can I just interrupt
10 for just one second? Can I ask Mr. Falic to speak
11 up just a little bit?

12 MR. KAPLAN: Sure.

13 THE WITNESS: Sure.

14 BY MR. KAPLAN:

15 Q Just to repeat my question. In addition to
16 you, Mr. Falic, who is involved in running the company?

17 A Neal Seideman.

18 Q Just spell Mr. Seideman's name for the record,
19 please.

20 A N-E-L (sic) and the last name is S-E-I-D-M-A-N
21 (sic).

22 Q Is it N-E-I-L?

23 THE WITNESS: N-E-A-L.

24 BY MR. KAPLAN:

25 Q What's his title?

1 A He is an executive vice president with us.

2 Q What is your job? What are your
3 responsibilities as CEO at Hard Candy now?

4 A I'm in touch mostly with Neal Seideman on a
5 daily basis to get daily updates.

6 Q And how long has Mr. Seideman been involved in
7 the company?

8 A Approximately three years.

9 Q Before Mr. Seideman became involved, what were
10 your responsibilities as CEO?

11 A I was involved in doing most of the work on a
12 day-to-day basis with the team.

13 Q Now can you explain to me in a little more
14 detail what the business of Hard Candy is?

15 A Hard Candy today has a very extensive cosmetic
16 and fragrance brand in all -- almost all Walmart doors
17 throughout the U.S. and Canada. Hard Candy also has
18 other categories such as sunglasses, cosmetic bags and
19 apparel all across Walmart doors.

20 Q In the beginning when the company was formed,
21 what type of products was it involved with?

22 A It start in cosmetics and fragrances.

23 Q And has the scope of the product line
24 expanded?

25 A Yes.

1 Q What other types of products does Hard Candy
2 now market and sell?

3 A All type of apparel, cosmetic bags,
4 sunglasses, as well as some iPhone cases and iPad
5 cases.

6 Q And you mentioned Walmart, when did Hard Candy
7 first begin to sell its products in Walmart?

8 A I think we first shipped in 2008.

9 Q All right. Now you let me ask you this. Have
10 you ever heard of a company called Hard Candy Cases,
11 LLC?

12 A Yes.

13 Q What's your understanding of HardCandy Cases,
14 LLC's business?

15 A All I have seen were some cases that they make
16 for iPhones and iPads.

17 Q Did you ever speak to anyone at HardCandy
18 Cases prior to this legal proceeding?

19 A Yes.

20 Q What about?

21 A We had spoken one -- a couple -- I think a
22 couple of times. I don't recall who, but it was several
23 years ago -- a couple of years ago, and we spoke about
24 coexisting, a coexisting license for some type of
25 minimal royalty.

1 Q Was any agreement reached between Hard Candy
2 and HardCandy Cases?

3 A No.

4 MR. KAPLAN: All right. Let me show you what
5 I'm marking as Applicant's Exhibit 1. For the
6 record it's a copy of a trademark service mark
7 application, serial number 77700559.

8 (Applicant's Exhibit No. 1 was marked for
9 identification.)

10 BY MR. KAPLAN:

11 Q Can you please take a look at that document,
12 Mr. Falic, and let me know when you've had a chance to
13 look through it.

14 A Okay.

15 Q If you would, turn to the second to the last
16 page.

17 A Okay.

18 Q You see that it indicates that you signed this
19 document?

20 A Yes.

21 Q And is the date that you signed this document
22 March 26, 2009?

23 A That's correct.

24 Q It says that your position was chief executive
25 officer at the time, was it?

1 A Correct. That's correct.

2 Q And according -- if you turn back one page it
3 indicates that the filing date was March 27, 2009. Do
4 you see that?

5 A Yes.

6 MR. WEST: We're going to object to this
7 because it's related to an application no longer at
8 issue subject to your specific request to withdraw.

9 MR. KAPLAN: That's correct.

10 BY MR. KAPLAN:

11 Q Take a look at the last page of the
12 application.

13 A Yes.

14 Q It says Hard Candy. What is that?

15 A That's one of our logos.

16 Q Now the -- back to the page that we were
17 looking at with the filing date. Do you see that?

18 A Yes.

19 Q It says this application is an international
20 class 009 for consumer electronics. What's your
21 understanding of the type of goods that covers?

22 MR. WEST: Objection. Calls for legal
23 conclusion.

24 BY MR. KAPLAN:

25 Q You can answer.

1 A Radios, clocks and electronic equipment.

2 Q Now at the time that Hard Candy filed this
3 application and you signed it, did Hard Candy have an
4 intent to use its Hard Candy trademark in the category
5 of consumer electronics?

6 A Yes.

7 MR. WEST: Objection. Calls for legal
8 conclusion.

9 THE WITNESS: Yes.

10 BY MR. KAPLAN:

11 Q Now as counsel's pointed out, this application
12 has been withdrawn; is that your understanding?

13 A Yes.

14 Q Does Hard Candy make a practice of filing
15 trademark applications it does not intend to use?

16 A No.

17 Q Why was this application withdrawn as you
18 understand it?

19 A As the time evolved with our brand, we came to
20 realize it could be a very long time before we bring out
21 electronics, so we decided to withdraw at this time.

22 Q Is it common for Hard Candy to withdraw an
23 application once it realizes it's not going to use the
24 mark with respect to a specific type of goods?

25 A No.

1 (Applicant's Exhibit No. 2 was marked for
2 identification.)

3 BY MR. KAPLAN:

4 Q Let me hand you what I'm marking as Exhibit 2,
5 which is another trademark application under serial
6 number 777005557. Is this an application that you
7 signed as well, Mr. Falic?

8 A Yes.

9 Q And, again, you signed this application as the
10 CEO of Hard Candy, LLC?

11 A Correct.

12 Q What is the date you signed?

13 A March 26, 2009.

14 Q And is this the same mark that we looked at on
15 the prior application?

16 A Same logo.

17 Q Same logo?

18 A Yes.

19 Q Now this application, if you turn back a
20 page -- there you are -- says it's international class
21 18 leather goods and purses. What's your understanding
22 of the type of goods that covers?

23 A Exactly like it's written; leather goods,
24 purses, handbags.

25 Q The application reads intent to use. The

1 applicant has bona fide intention to use or use through
2 the applicant's related company or licensee the mark in
3 commerce on or in connection with the identified goods
4 and/or services. What do you understand bona fide to
5 mean?

6 A It means good faith.

7 Q Did Hard Candy have a bona fide intention to
8 use the mark in connection with leather goods and
9 purses?

10 MR. WEST: Objection. Calls for legal
11 conclusion.

12 BY MR. KAPLAN:

13 Q Okay. Let me finish the question, if you
14 don't mind. Did Hard Candy have a bona fide intent to
15 use the mark in connection with leather goods and purses
16 when you signed and filed this application in March
17 of 2009?

18 MR. WEST: Objection is renewed.

19 THE WITNESS: Absolutely.

20 BY MR. KAPLAN:

21 Q How did Hard Candy intend to use the mark in
22 connection with leather goods and purses when this
23 application was filed?

24 A To create a line of leather goods and purses
25 to sell into and to add into the categories that we

1 carry at Walmart.

2 Q Can you tell me generally what steps Hard
3 Candy took to use the mark in connection with leather
4 goods and purses?

5 A We had created some diagrams, some samples,
6 that we did take over to Walmart and we presented it to
7 the various buyers at Walmart.

8 Q When were those steps first taken by Hard
9 Candy?

10 A I don't have the exact dates here.

11 Q As of the date the application was filed in
12 March of 2009, had Hard Candy taken any of those steps
13 you described?

14 A It was definitely around that date.

15 Q And has Hard Candy continued to take steps to
16 use the mark in connection with leather goods and purses
17 since the time this application was filed?

18 A Yes.

19 MR. KAPLAN: Let me show you what I'm marking
20 as Exhibit 3.

21 (Applicant's Exhibit No. 3 was marked for
22 identification.)

23 BY MR. KAPLAN:

24 Q For the record, this is an e-mail Bates
25 stamped HC57 to 63. Mr. Falic, please take a look at

1 this document and let me know if you can identify it.

2 A Yes.

3 Q What is it?

4 A This is an e-mail that I received from Debra
5 Restler from Beanstalk Company.

6 Q What's the date of the e-mail?

7 A February 3rd, 2009.

8 Q What is Beanstalk -- the Beanstalk Group?

9 A Beanstalk is company that helps develop brands
10 that want to license varies products into various
11 retailers. They connect the licensors and the
12 retailers.

13 Q So this e-mail came before the date the
14 application was filed?

15 A Correct.

16 Q The e-mail says, Dear Jerome. It was a
17 pleasure seeing you last week. Had you met with the
18 Beanstalk Group before the date of this e-mail?

19 A Yes.

20 Q Where did you meet with them?

21 A In their offices in New York.

22 Q The e-mail also says after all of our phone
23 calls and e-mails. What calls and e-mails had you had
24 with the Beanstalk Group?

25 A We had a few phone calls and e-mails in

1 exchange regarding the Hard Candy brand.

2 Q Were the e-mails before the date of the
3 meeting? Were the calls and e-mails before you met?

4 A Yes.

5 Q For how long have you been calling and
6 e-mailing with the Beanstalk Group before you met the
7 week before February 3rd, 2009?

8 A It had to be several weeks.

9 Q Now the e-mail references and attached
10 licensing representation proposal, is that attached?

11 A Yes.

12 Q What did you understand the proposal to be?

13 MR. WEST: Objection. The document speaks for
14 itself.

15 BY MR. KAPLAN:

16 Q You can answer, sir.

17 A Okay. The proposal was for them to help me
18 develop -- to help us develop Hard Candy, various
19 products of Hard Candy through a licensing program that
20 it would help me take directly -- direct to retail.

21 Q Did the products include handbags and purses?

22 A Yes.

23 MR. WEST: Objection. The document speaks for
24 itself.

25

1 BY MR. KAPLAN:

2 Q Sir, in the course of your calls, e-mails, and
3 meetings with Beanstalk Group, did you discuss handbags
4 and purses among the products under consideration?

5 A We discussed leather handbags, purses and many
6 other categories.

7 Q Why did Hard Candy want this licensing
8 proposal from the Beanstalk Group?

9 A We were seeking what was the best way to go
10 out and develop the brand into a lifestyle brand, so we
11 were given this name of this company, Beanstalk. That
12 was it.

13 Q You said lifestyle brand. What do you mean
14 you by that?

15 A Lifestyle brands are the brands that various
16 retailers are taking in today where they expand one of
17 their brands into various categories and they go into
18 leather goods, jewelry, handbags, watches, and so on.

19 Q What role, if any, did Beanstalk play in
20 developing Hard Candy's relationship with Walmart?

21 A We did not engage them. We didn't hire them.

22 MR. KAPLAN: Let me show you what I'm going to
23 mark as Exhibit 4. And, Mr. West, unless you have
24 an issue, I will just move all the exhibits into
25 evidence at the close of my questioning.

1 MR. WEST: That's fine.

2 (Applicant's Exhibit No. 4 was marked for
3 identification.)

4 BY MR. KAPLAN:

5 Q For the record, Exhibits 4 is an e-mail and
6 attachment Bates stamped HC64 to 75. Take a look at
7 this document, Mr. Falic, and let me know if you can
8 identify it.

9 A This is an e-mail I received from Stu Dolleck
10 from Nu World Cosmetics -- Nu World Beauty, on
11 October 7, 2009.

12 Q What is Nu World Beauty?

13 A Nu World Beauty is a company that manufactures
14 and distributes and licenses various cosmetic products.

15 Q Okay. Again for the record, Nu World is N-U
16 World. Now what work was Nu World doing with Hard Candy
17 at the time of this e-mail?

18 A Nu World is a licensee -- was and still is a
19 licensee of Hard Candy Cosmetics and they -- and this
20 e-mail in particular was to start work on -- to start
21 work on presenting Walmart with various other
22 accessories, such as handbags and leather goods. And
23 you can see here various other products, home goods,
24 sunglasses, watches, et cetera.

25 Q You are referring to the attachments to the

1 e-mail?

2 A Yes.

3 Q All right. What are the attachments?

4 A There is, again, handbags, purses, leather
5 goods. There is some cosmetics in there. There is
6 candles, jewelry, sunglasses, bath products, let me see
7 here, stationery and apparel and many of these were
8 actually produced.

9 Q When you say that you were referring to the
10 representation of handbags and purses, can you identify
11 the page number where you see those?

12 A HC000065.

13 Q Who prepared these images?

14 A These were rough concepts done by Nu World and
15 they could have been done together with Allegro as well.

16 Q You said Allegro?

17 MR. WEST: I didn't hear that.

18 BY MR. KAPLAN:

19 Q He said Allegro. That's A-L-L-E-G-R-O. Who
20 is Allegro?

21 A Allegro was a licensee of Hard Candy which
22 produced and sold into Walmart cosmetic bags at the
23 time.

24 Q Mr. Dolleck's e-mail and that's,
25 D-O-L-L-E-C-K, says these are strictly for discussion to

1 give them a feel for the depth of the brand. Who did
2 you understand the "them" to be, Mr. Falic?

3 A Walmart.

4 (Applicant's Exhibit No. 5 was marked for
5 identification.)

6 Q Let me show you what I have marked as Exhibit
7 No. 5. For the record, this is an e-mail Bates stamped
8 HC40 to 56 including attachments. Sir, please review
9 this document and let me know if you can identify it.

10 A Yes, I can.

11 Q What is it?

12 A It's an e-mail I received from Diana Ruth from
13 Nu World from Stu Dolleck's office.

14 Q What's the date of the e-mail?

15 A Sorry. May 24, 2010.

16 Q The subject reads lifestyle deck and the
17 e-mail says please see the attached Hard Candy lifestyle
18 deck. What does lifestyle deck mean?

19 A It's basically you put together a group of
20 concepts, ideas. You put them together, in this case,
21 with photographs to be able to make a presentation.

22 Q The attachment, is that the photographs you
23 are referring to?

24 A Yes.

25 Q What is the range of Hard Candy brand products

1 shown in the attached photographs?

2 A There are bath products, fragrances, apparel,
3 hats, shoes, handbags, leather goods, sunglasses,
4 jewelry, watches and some candles and some stationery.

5 Q And take a look at the page that's number
6 HC49.

7 MR. WEST: I'm sorry. Can you speak up?

8 BY MR. KAPLAN:

9 Q HC49.

10 A Okay.

11 Q What are those images of?

12 A These are leather goods and handbags.

13 Q Those have the Hard Candy logos and marks on
14 them?

15 A Correct.

16 Q Take a look at the next page, HC50 on the, I
17 guess if you are looking at the page right side up, what
18 is the picture on the top left?

19 A It's a leather case for sunglasses.

20 Q Does that have the Hard Candy on it?

21 A Yes, it does.

22 Q What was this deck to be used for?

23 A For presentation for Walmart.

24 Q For what purpose were the images of the
25 leather goods and purses included?

1 A To show Walmart how we can expand the brand
2 and lifestyle brand.

3 Q Did Hard Candy have an intent at that time to
4 include leather goods and purses as part of that line?

5 A Yes.

6 (Applicant's Exhibit No. 6 was marked for
7 identification.)

8 Q Let me show you what I'm marking as Exhibit 6.
9 This is the one-page document entitled Hard Candy
10 licensing term sheet, Bates numbered HC172. What is
11 this document, sir?

12 A It's Hard Candy licensing term sheet for -- to
13 produce cosmetic bags, cosmetic cases, and handbags.

14 Q You mentioned the name Allegro before and it
15 looks like Allegro is listed here as the licensee. Who,
16 again, is Allegro?

17 A Allegro is the company that made ready
18 cosmetic bags for Walmart and sold them; cosmetic bags,
19 cosmetic cases and they were also interested in doing
20 handbags as well for Walmart.

21 Q Do you know who the signatures at the bottom
22 of the documents are, just the parties?

23 A It's Nu World and Allegro.

24 Q What was this agreement or this licensing term
25 sheet for?

1 A It was to produce cosmetic bags, cosmetic
2 cases and handbags to distribute to Walmart.

3 Q In fact, if you look at the -- towards the top
4 of the term sheet, it says licensed articles shall
5 include -- can you read that?

6 A License articles -- yeah, shall include
7 cosmetic bags, cosmetic cases and handbags.

8 Q And those were the articles covered by the
9 license?

10 A Correct.

11 Q What did Allegro do?

12 A They created samples. They made diagrams,
13 created samples for our approval and then they showed
14 them to -- they presented them to Walmart.

15 Q Were there samples of leather goods and
16 purses?

17 A Yes.

18 (Applicant's Exhibit No. 7 was marked for
19 identification.)

20 Q I'm handing you what's been marked as Exhibit
21 7, Bates stamped -- it's an e-mail with an attachment
22 Bates stamped HC91 to 92. Can you identify this
23 document, sir?

24 A This is an e-mail I received from Alberto
25 Kamhazi from Supply 26 on August 2nd, 2011.

1 Q Kamhazi is K-A-M-H-A-Z-I. What is Supply 26?

2 A Supply 26 is a company that we used to -- that
3 goes out and manufactures various items from leather
4 bags, duffel bags, iPhone cases, iPad cases, and many
5 other products.

6 Q And you say "we", who do you mean?

7 A We -- I use within our various companies we
8 use them.

9 Q Does that include Hard Candy?

10 A In this case it was for Hard Candy.

11 Q And what was Supply 26 to do for Hard Candy?

12 A First to produce samples and then to produce
13 product.

14 Q Samples and product of what?

15 A Of iPad cases, leather iPad cases, and
16 iPhone cases.

17 Q What intent, if any, did Hard Candy have to
18 use its Hard Candy mark for cell phone and iPad cases?

19 A Every intent.

20 Q When, if ever, did Hard Candy take steps to
21 produce Hard Candy branded --

22 MR. WEST: I'm sorry, Counsel. You are fading
23 out.

24 MR. KAPLAN: Sorry.

25

1 BY MR. KAPLAN:

2 Q Let me try that again. When, if ever, did
3 Hard Candy take steps to produce Hard Candy branded cell
4 phone and iPad cases?

5 A Well, we -- according to here where we started
6 back with him -- with Alberto with Supply 26 in 2011.
7 We actually produced product in 2013.

8 Q Did Hard Candy intend to use the mark for cell
9 phone -- let me ask the question this way. Referring
10 specifically to the e-mail, it says attached you will
11 you find the conspiracy and FOB price for the PU iPad
12 case. Can you explain what that means?

13 A It's a picture for the leather iPad case.

14 Q By PU, what did you understand that to mean?

15 A I understood it to be a type of leather.

16 Q And then there is a photograph attached?

17 A Correct.

18 Q What does the photo show?

19 A It's a leather iPad case.

20 (Applicant's Exhibit No. 8 was marked for
21 identification.)

22 Q Let me show you what I'm marking as Exhibit 8.
23 That's an e-mail with attachment Bates stamped HC80 to
24 90. Can you identify this document, Mr. Falic?

25 A This is an e-mail I received from Alberto

1 Kamhazi on August 3rd, 2011.

2 Q Mr. Kamhazi is the same gentleman that sent
3 you the e-mail we just looked at?

4 A From Supply 26, yes.

5 Q This is a further e-mail from him?

6 A It's another e-mail for more options of more
7 iPhone and iPad cases with -- now with iPhone,
8 iPhone leather cases and some iPad leather cases.

9 Q You are referring to the pictures that are
10 attached to the e-mail?

11 A Correct.

12 Q What specifically do the pictures show?

13 A The various leather cases that they could make
14 for us and iPhone and iPad cases.

15 Q Was it Hard Candy's intent to use these cases
16 along with the Hard Candy mark?

17 A Yes.

18 MR. KAPLAN: Let me hand you the next exhibit,
19 which is marked Exhibit No. 9.

20 (Applicant's Exhibit No. 9 was marked for
21 identification.)

22 BY MR. KAPLAN:

23 Q This is an e-mail with attachments Bates
24 stamped HC93 to 97. Could you identify this?

25 A This is an e-mail I received from Alberto

1 Kamhazi from Supply 26 again on October 19, 2011.

2 Q And this e-mail is in Spanish, yes?

3 A Yeah, that's correct.

4 Q Can you give us your understanding of what it
5 said?

6 A Yes. It says, please look at the location of
7 the logo we put on the product. It was done by a simple
8 Photoshop just for me to see the size and the location.
9 It's very important that you tell us if we need to put
10 the white under the heart. I don't think you need to,
11 but I need your confirmation.

12 Q And there are some photographs that are
13 attached to the e-mail?

14 A Correct.

15 Q When he says white and refers to a heart, what
16 is he talking about, as you understood it?

17 A It was some part of the logo to put it down
18 below.

19 Q And the pictures, what do the pictures show?

20 A The pictures show the back of the iPhone and
21 iPad cases and covers with the Hard Candy logo on them.

22 Q When you say the Hard Candy logo, specifically
23 what are you referring to in the pictures?

24 A The way we have Hard Candy written with this
25 logo, which is the name drawn through a heart.

1 Q And that's -- these photos are black and
2 white. Is the heart colored?

3 A Yes.

4 Q What color?

5 A Kind of reddish or pinkish or it really -- we
6 have various -- we have gone through various logos.

7 Q Okay. And then the background of the logo
8 here is white?

9 A Right.

10 Q What was the status of the work that Supply 26
11 was doing as of this time?

12 A What was the --

13 Q The status.

14 A We were still finalizing the exact product.

15 Q Okay. Did there come a time when Hard Candy
16 moved forward with the production of these cases?

17 A Yes.

18 Q When was that?

19 A Actually we went -- we did produce in 2013
20 some product.

21 Q Is that product being sold now?

22 A Yes.

23 MR. KAPLAN: All right. Let me show you what
24 I'm marking as Exhibit 10.

25

1 (Applicant's Exhibit No. 10 was marked for
2 identification.)

3 BY MR. KAPLAN:

4 Q This is an e-mail chain Bates stamped HC150 to
5 153. Take a look at that and let me know if you can
6 identify the document.

7 A This is an e-mail I received from Neal
8 Seideman on November 8, 2012.

9 Q What was your -- again, we mentioned Neal
10 Seideman's name a little bit earlier. Who is he and
11 what was his role? What is his role at Hard Candy?

12 A He runs the day-to-day operations at Hard
13 Candy.

14 Q Just for the record, Lori Maltz was a
15 secretary at our office and the person who printed out
16 the e-mail. What was your understanding of these
17 e-mails that were forwarded to you?

18 A This particular e-mail was an e-mail exchange
19 that he had with a company from Life Works and they
20 produce various iPhone and iPad, iPhone covers --
21 cases under Life Works brand and we were wanting -- he
22 was -- we were -- we had met them to see how we can move
23 forward for them to make the same thing with our Hard
24 Candy brand.

25 MR. KAPLAN: Let me show you what I'm marking

1 as Exhibit 11.

2 (Applicant's Exhibit No. 11 was marked for
3 identification.)

4 BY MR. KAPLAN:

5 Q HC138 to 143. Can you identify this document,
6 Mr. Falic?

7 A This is a document that I sent to Neal
8 Seideman on November 9, 2012.

9 Q What is the subject of the e-mails?

10 A Hard Candy cases.

11 Q You say to Mr. Seideman in your e-mail, can
12 you send me the renderings. What did you mean by
13 renderings?

14 A The pictures or the outlines design of the
15 products.

16 Q Are there renderings included in this e-mail
17 exchange?

18 A Yes.

19 Q Which page?

20 A On page HC000139.

21 Q Can you describe what's shown on that page?

22 A On the top there are iPad, iPad leather cases,
23 iPhone cases.

24 Q Why did Hard Candy want these renderings?

25 A Because we wanted to develop a line as part of

1 our assortment of the brand.

2 Q What happened with Life Works?

3 A We just never were able to move forward with
4 them.

5 Q Who did end up manufacturing the iPhone and
6 iPad cases? Was it Supply 26?

7 A No. We moved ahead. I actually had Nu World
8 work on it himself.

9 Q Okay. And Nu World was who again?

10 A He is our licensee of cosmetics.

11 MR. KAPLAN: All right, sir. Let me show you
12 what I'm marking as Exhibit 12.

13 (Applicant's Exhibit No. 12 was marked for
14 identification.)

15 BY MR. KAPLAN:

16 Q This is an e-mail with attachments Bates
17 stamped HC98 to 102. Can you identify this document?

18 A This is an e-mail that I received from Neal
19 Seideman on July 30, 2012 regarding Hard Candy
20 accessories. We had a weekly recap, so they would keep
21 me posted on what's going on almost on a weekly basis.

22 Q It includes an e-mail from someone named
23 Jordan, J-O-R-D-A-N, Pagonakis, P-A-G-O-N-A-K-I-S. Who
24 was that?

25 A It was a junior design person reporting to one

1 of the lead design persons at the time.

2 Q And he was Mr. -- Mr. or Ms., the employee
3 Pagonakis, was that an employee of Hard Candy?

4 A Of Hard Candy, yes.

5 Q And his e-mail talks about -- I'm looking at
6 the second full paragraph presenting to Walmart teams.
7 Do you see that?

8 A Yes.

9 Q What was your understanding of that?

10 A For one of the -- the upcoming meetings with
11 Walmart to present to them the range of products that we
12 were looking at.

13 Q The e-mail continues, over all the focus for
14 HC accessories is all about key items, with key items in
15 all capitals. HC, is that Hard Candy?

16 A Hard Candy, correct.

17 Q What did this mean as you understood it, key
18 items?

19 MR. WEST: Objection. Calls for speculation.

20 THE WITNESS: We were looking for the most
21 important categories under the accessory category
22 to extend Hard Candy in.

23 BY MR. KAPLAN:

24 Q And of course at the time you were CEO of Hard
25 Candy, correct?

1 A Correct.

2 Q Did you have as CEO an understanding of the
3 key items on which Hard Candy was focused on?

4 A Yes.

5 Q Did those items include what's depicted in the
6 pictures attached to this e-mail?

7 A Yes.

8 Q What do those pictures show?

9 A These are leather purses in the picture.

10 Q Were these pictures to be part of the product
11 line for Walmart?

12 A That's correct.

13 Q And then also attached to the e-mail is a
14 two-page document entitled weekly recap. Do you see
15 that?

16 A Yes.

17 Q That was a recap submitted to you as CEO of
18 Hard Candy?

19 A Correct.

20 Q Item two says suppliers. Do you see that?

21 A Yes.

22 Q It mentions accessory exchange and then in
23 parentheses it says bags, wristlets, SLGs and socks. Do
24 you see that?

25 A Yes.

1 Q What did you understand that to mean?

2 A This is someone who can produce the leather
3 bags, wristlets, which were also in the pictures there,
4 small leather purses, SLGs, and socks.

5 Q You refer back to the picture. Please turn to
6 that page HC100. Specifically which images are of the
7 wristlets?

8 A The first the one that stands out actually,
9 the big one that stands out.

10 Q That's the one at the bottom of the page?

11 A Yes.

12 Q Okay. There is a little strap attached. Is
13 that supposed to be around your wrist?

14 A It's around your wrist, a little leather purse
15 that goes around your wrist.

16 Q Now, paragraph three of the recap back on page
17 HC101 says Bentonville trip. Had there been a trip to
18 Bentonville?

19 A Various trips to Bentonville.

20 Q What is Bentonville? Who is located there?

21 A The Walmart headquarters.

22 Q Down below the second paragraph, under the
23 Bentonville trip, it says, met with Susan's team and
24 then in parentheses handbags, totes --

25 MR. WEST: I'm sorry, Counsel. All I can hear

1 is shuffling paper.

2 BY MR. KAPLAN:

3 Q I'm just reading from the document. It says
4 met with Susan's team and then in parentheses, handbags,
5 totes, SLGs. What was your understanding of that?

6 A Susan was one of the buyers in the category
7 and again, handbags -- leather handbags, totes and SLGs,
8 again, they're small leather goods.

9 Q Who has -- Susan was a Walmart buyer?

10 A That's correct.

11 Q Who had met with Susan?

12 A On this trip --

13 Q I just mean which company?

14 A Oh, Hard Candy. I'm sorry.

15 Q Does this refer to a meeting between Hard
16 Candy people and Walmart people related to handbags,
17 totes, and SLG?

18 A Correct.

19 Q Do you know if samples of the handbags and
20 purses were made at any time by Hard Candy?

21 A Yes.

22 Q Were samples given to Walmart; shown to
23 Walmart?

24 A They were shown to Walmart.

25 Q How were they shown to Walmart?

1 A In the meeting, in the meeting with them.

2 Q Why were samples of purses, handbags, and
3 leather goods made and shown to Walmart?

4 A Because we were looking to expand the brand
5 into a lifestyle brand.

6 Q Was the expanded brand to include handbags,
7 leather goods and purses?

8 A Yes.

9 Q Take a look at the next page of the document
10 HC102. Do you see there is a category, price points
11 underlined and it says SLGs \$10 and under and then below
12 that, handbags \$18.88?

13 A Yes.

14 Q Why were price points being set for handbags?

15 A To show them that we can hit their key price
16 points within each category of the handbags.

17 Q Does Hard Candy still intend to sell handbags,
18 purses, and leather goods?

19 A Yes.

20 Q What is the status of those efforts now?

21 A We did recently receive or we are showing some
22 sample purses from Allegro. We are still -- we still
23 continue our efforts to show Walmart, but in the
24 meantime we are looking to expand some of the handbags
25 into Duty Free America shops.

1 Q Has it been Hard Candy's intent since the
2 filing of the application we looked at, Exhibit 2 in
3 2009 to use the trademark in connection with leather
4 goods, purses and handbags?

5 A Yes.

6 MR. KAPLAN: All right. I move into evidence
7 what's been marked for identification as Exhibits 1
8 through 12. And I'm now going to mark one last
9 Exhibit 13.

10 (Applicant's Exhibit No. 13 was marked for
11 identification.)

12 MR. WEST: And we note that we object to the
13 introduction of this document specifically on the
14 grounds that previously the Court has ruled no
15 additional discovery may be provided by Hard Candy.

16 MR. KAPLAN: I understand the position. I'm
17 not certain as we sit here today whether or not
18 this was produced. I'm going to question the
19 witness about it. In any event, I understand your
20 objection.

21 MR. WEST: Okay. I'm fine with the
22 questioning continuing, noting my ongoing objection
23 with the relevance of this document.

24 MR. KAPLAN: It's not relevance. It's just
25 that it wasn't produced in discovery you are

1 saying, correct?

2 MR. WEST: Not a relevancy objection, no. I'm
3 noting that as there is an ongoing objection
4 regarding use of the document because it was not
5 produced during the discovery period --

6 MR. KAPLAN: Understood.

7 THE WITNESS: -- and that objection is lodged
8 with regards to all questions related to this
9 exhibit.

10 MR. KAPLAN: I understand.

11 BY MR. KAPLAN:

12 Q Mr. Falic, can you tell us what this document
13 is?

14 A This document shows various handbags and
15 leather goods. I'm showing basically a collection that
16 we can produce of Hard Candy for Walmart.

17 Q What was the -- what was the purpose of these
18 pages and the images shown on them?

19 A Just to show them the various designs that we
20 were able to come up with to bring this product category
21 into the assortment of the brand.

22 MR. KAPLAN: All right. I have no further
23 questions. Your witness, Mr. West.

24 MR. WEST: Okay. Can we take a quick five-,
25 10-minute break so we can get organized here and

1 then we'll be off to cross?

2 MR. KAPLAN: Sure.

3 MR. WEST: Okay. I will give you a call back.
4 Why don't we say 25 after?

5 MR. KAPLAN: That's fine.

6 (A brief recess was taken.)

7 CROSS-EXAMINATION

8 BY MR. WEST:

9 Q We are on the record. Good morning,
10 Mr. Falic. How you are you doing?

11 A Fine. Thank you.

12 Q I just have a few questions. I won't take
13 much of your time. We're going to start by going back
14 through some of the exhibits that counsel, your
15 attorney, presented to you. I would like to start with
16 what was previously marked as Applicant's Exhibit 1.

17 A Okay.

18 Q And as you previously stated, this is an
19 application for consumer electronics, correct?

20 A Correct.

21 Q And that application was subsequently
22 withdrawn during this proceedings, correct?

23 A Sorry. Say that again.

24 Q Is the application that we are looking at,
25 application number 77700559 was expressly withdrawn by

1 you during this proceeding?

2 A Correct.

3 Q One moment. Turning now to Opposer's Exhibit

4 A.

5 (Opposer's Exhibit A was marked for
6 identification.)

7 BY MR. WEST:

8 Q You've seen this document before, correct?

9 A I don't know. Let me see. Yes.

10 Q And this is your original application for the
11 trademark Hard Candy for leather goods and purses?

12 A Yes.

13 MR. KAPLAN: This is the same as our
14 Exhibit 2, correct?

15 MR. WEST: It's identical to your exhibit.
16 Correct, Counsel.

17 MR. KAPLAN: Thank you.

18 (Opposer's Exhibit B was marked for
19 identification.)

20 BY MR. WEST:

21 Q And once again just confirm that the
22 application was executed by you on March 26, 2009?

23 A Correct.

24 Q Okay. Turning now to Opposer's B. Do you
25 recognize that document?

1 A Yes.

2 Q And do you recognize the name of the person
3 who executed the document?

4 A Yes.

5 Q And who is Mr. Manuel Valcacer, I believe it
6 is?

7 A He is our attorney.

8 Q And this document amends the description of
9 goods from your original description of leather goods
10 and modifies it to leather goods, namely, backpacks,
11 leather bags, suitcases, wallets, leather cases, leather
12 handbags, leather key chains, leather pouches, traveling
13 bags and purses, correct?

14 A Yes.

15 Q And this document was submitted or indicated
16 as submitted or signed on 3/17 -- I'm sorry, 12/17/2009?
17 Let me repeat that question. The document was signed by
18 Mr. Manuel Valcacer on 12/17/2009, correct?

19 A Yes.

20 Q Moving to Opposer's Exhibit 8. Do you
21 recognize that document?

22 A No.

23 Q And this document that you are looking at,
24 Opposer's Exhibit B, it lists the current application
25 for Hard Candy mark -- for the Hard Candy mark with the

1 goods, leather goods, namely, backpacks, leather bags,
2 suitcases, wallets, leather cases, leather handbags,
3 leather key chains, leather pouches, traveling bags and
4 purses, correct?

5 MR. KAPLAN: Objection. Document speaks for
6 itself. Lack of foundation.

7 THE WITNESS: Yes.

8 BY MR. WEST:

9 Q Does the document accurately reflect the
10 current description of the goods and services on the
11 pending application serial number 77700557.

12 MR. KAPLAN: Objection. Calls for legal
13 conclusion. Lack of foundation.

14 THE WITNESS: I don't know the numbers you
15 gave me, so I don't know.

16 BY MR. WEST:

17 Q To repeat the numbers, 77700557.

18 MR. KAPLAN: What's the question?

19 MR. WEST: The question is still pending,
20 Counsel.

21 BY MR. WEST:

22 Q Does the document accurately reflect the
23 current status of the Hard Candy trademark application
24 serial number 77700557 for the goods stated as leather
25 goods; namely, backpacks, leather bags, suitcases,

1 wallets, leather cases, leather handbags, leather key
2 chains, leather pouches, traveling bags and purses?

3 MR. KAPLAN: Same objections.

4 THE WITNESS: I don't know if I saw that
5 reference number. I don't remember the numbers.
6 The number you read to me, I don't know which one
7 it is, so --

8 BY MR. WEST:

9 Q In the center of the document, approximately a
10 third from the bottom --

11 A I see it.

12 Q -- indicates the serial number, correct?

13 A I got it. Yeah. I see it now.

14 Q And the answer to my question then?

15 MR. KAPLAN: Same objections.

16 THE WITNESS: Yes.

17 (Opposer's Exhibit C was marked for
18 identification.)

19 (Opposer's Exhibit D was marked for
20 identification.)

21 BY MR. WEST:

22 Q Thank you. Turning now to the same document
23 that is Opposer's Exhibit D and Applicant's Exhibit 3,
24 you previously identified this document as a proposal
25 from Beanstalk Group, correct?

1 A Correct.

2 Q And this proposal was never followed through
3 upon, correct?

4 A That's correct.

5 Q There is no executed contract associated with
6 this proposal?

7 A Not with Beanstalk, no. Correct.

8 Q And looking through the document nowhere in
9 the document does it list leather goods, correct?

10 MR. KAPLAN: Document speaks for itself.

11 BY MR. WEST:

12 Q I'm sorry. Did I get an answer or are you
13 still reviewing the document?

14 A No. I'm reviewing to see because I know it
15 was discussed with them. I'm just seeing that they
16 noted it. What they did note is lifestyle brand.

17 MR. WEST: Objection. Counsel --

18 MR. KAPLAN: I'm sorry?

19 MR. WEST: I did not ask that question.

20 MR. KAPLAN: Hold on. Let the witness finish
21 his answer. You can't object to the answer.

22 Mr. Falic, are you still answering?

23 THE WITNESS: Yeah. Lifestyle brand for us,
24 which is what they mentioned here covers a broad
25 range of accessories which we had discussed

1 regarding -- which were the same items, the
2 handbags, purses, jewelery, watches, and all the
3 items that we were producing for the Hard Candy
4 brand.

5 MR. WEST: Objection. Move to strike. The
6 witness has not answered the question.

7 BY MR. WEST:

8 Q The pending question is the document does not
9 include the word leather goods, correct?

10 MR. KAPLAN: Asked and answered and note my
11 objections.

12 THE WITNESS: Correct.

13 BY MR. WEST:

14 Q The document does not list leather bags,
15 correct?

16 MR. KAPLAN: Objection. Document speaks for
17 itself.

18 THE WITNESS: Correct.

19 MR. WEST: A side note to counsel, your
20 objection is noted. I will be going through the
21 entire litany asking the same questions. If you
22 would like to state an objection for all of them at
23 once rather than repeatedly after each question,
24 I'm fine with that.

25 THE WITNESS: I answered correct.

1 MR. KAPLAN: Do you have another question?

2 MR. WEST: Yes. I was waiting for a response
3 to my question as to whether you wanted to state a
4 single objection or object to each individual item
5 because I will be going through the list.

6 MR. KAPLAN: I will object to the specific
7 questions. I think that way is better for the
8 record.

9 MR. WEST: That's fine.

10 BY MR. WEST:

11 Q The document that we're referring to,
12 Applicant's Exhibit 3 or Opposer's Exhibit D does not
13 list specifically leather backpacks, does it?

14 MR. KAPLAN: Objection. Document speaks for
15 itself.

16 THE WITNESS: No.

17 BY MR. WEST:

18 Q The document does not list backpacks, does it?

19 A No.

20 MR. KAPLAN: Same objection. I tell you what,
21 I've reconsidered my position. I agree to a
22 standing objection that this document speaks for
23 itself.

24 MR. WEST: Understood.

25

1 BY MR. WEST:

2 Q The document does not include reference to
3 suitcases, correct? Standing objection noted.

4 A Correct.

5 Q The document does not list wallets, correct?

6 A Correct.

7 Q Nor leather cases?

8 A Correct.

9 Q Nor leather handbags?

10 A Correct.

11 Q Nor leather key chains?

12 A Correct.

13 Q Nor leather pouches?

14 A Correct.

15 Q Nor leather traveling bags?

16 A Correct.

17 Q And it does not list purses, correct?

18 A Correct.

19 Q During your testimony with regards to this
20 document you reference e-mails before you met?

21 A Correct. It's mentioned in the document.

22 Q So you have no record of those e-mails,
23 correct?

24 MR. KAPLAN: Objection. Vague and ambiguous.

25

1 BY MR. WEST:

2 Q The referenced e-mails in the documents, you
3 have no record of those e-mails, correct?

4 MR. KAPLAN: Objection. Vague and ambiguous.

5 BY MR. WEST:

6 Q Do you understand the question?

7 A I do. I just don't know -- I don't know if I
8 have them or not. I have no idea. It was several years
9 ago.

10 Q Were you asked to locate those documents?

11 MR. KAPLAN: Let me just object to the
12 extent -- asking him about communications with his
13 attorneys is privileged.

14 MR. WEST: I'm not asking about communications
15 with the attorney. I'm asking about whether
16 discovery was complied with.

17 MR. KAPLAN: Well, objection. Lack of
18 foundation.

19 BY MR. WEST:

20 Q Did you receive a document from us -- strike
21 that.

22 A I'm sorry?

23 Q Hold on one moment. I will ask the question
24 one more time in a different manner. The referenced
25 e-mails in the document, you have not been able to

1 locate them, correct?

2 A I guess not.

3 (Opposer's Exhibit E was marked for
4 identification.)

5 (Opposer's Exhibit F was marked for
6 identification.)

7 BY MR. WEST:

8 Q I'm going to turn now to Opposer's Exhibit E.
9 What's the date on this document?

10 A November 20th, 2012.

11 Q Nothing further with that document. Turning
12 to Opposer's Exhibit F. Do you recognize that document?

13 A Yes.

14 Q And it's entitled Hard Candy licensee list,
15 correct?

16 A Yes.

17 Q Is that a complete list of all Hard Candy's
18 licensees?

19 A No.

20 Q There are additional licensees that are not on
21 this list?

22 MR. KAPLAN: Asked and answered. I also
23 object as vague and ambiguous.

24 BY MR. WEST:

25 Q Hard Candy has additional licensees that are

1 not listed on Opposer's Exhibit F entitled Hard Candy
2 licensee list; is that correct?

3 MR. KAPLAN: Objection. Lack of time frame.

4 MR. WEST: Are you instructing the witness not
5 to answer?

6 MR. KAPLAN: No.

7 THE WITNESS: I can tell you this is not an
8 actual licensee list. This is a list of the
9 potential licensees in some of the cases because I
10 can see some were not signed.

11 BY MR. WEST:

12 Q In this document anywhere does it list leather
13 backpacks?

14 MR. KAPLAN: Objection. The document speaks
15 for itself.

16 THE WITNESS: Under accessories exchange it
17 does say small leather goods and handbags. It's
18 the same type of product.

19 BY MR. WEST:

20 Q I'm sorry. You said it said small leather
21 goods?

22 A SLG stands for small leather goods and tote
23 bags and also handbags. It's all under the same
24 category; backpacks, handbags, small leather goods and
25 totes.

1 BY MR. WEST:

2 Q And you consider a backpack as small leather
3 goods?

4 A No. I think it's considered a handbag or a
5 tote.

6 Q Do you consider suitcases as small leather
7 goods?

8 A As a handbag.

9 Q So you are stating that you believe suitcases
10 are handbags?

11 A No, I'm saying --

12 MR. KAPLAN: Asked and answered.

13 THE WITNESS: What I'm -- let me see. Well,
14 what I want to say is it might not be listed there
15 because not every detail is listed doesn't mean
16 it's not falling under the same category.

17 BY MR. WEST:

18 Q Understood. And as a point to your
19 specific -- looking at your specific referencing the
20 accessory exchange, the first indicated licensee, there
21 is a small asterisk at the end of that. What does that
22 indicate?

23 MR. KAPLAN: I apologize. Could you restate
24 the question? I lost it.

25

1 BY MR. WEST:

2 Q On the first line under licensee where it
3 indicates accessory exchange, there is a small asterisk
4 following the word accessory exchange, what does that
5 indicate?

6 A I don't know. Let me see. License pending.

7 Q So as of the date of this document, there was
8 not an active license with the accessory exchange,
9 correct?

10 MR. KAPLAN: Objection. Time frame.

11 THE WITNESS: I don't know because I don't
12 have a date here.

13 BY MR. WEST:

14 Q That was going to be my next question. What
15 is the date of this document?

16 A I don't know.

17 Q When was the document created?

18 A I don't know.

19 Q Was it created after 3/26/2009?

20 A I can't answer because I don't know.

21 Q And you are the CEO of the company, correct?

22 A Correct.

23 Q On 3/26/2009 you were in charge of the
24 day-to-day operations, correct?

25 A Correct.

1 Q Nothing further with regards to that exhibit.
2 Turning now to Applicant's Exhibit 4. The date of this
3 document is October 7, 2009, correct?

4 A Correct.

5 Q And during your testimony previously you
6 indicated that these documents were to quote, "start
7 work on concept"; is that correct?

8 A It was more to work on the presentation.

9 Q And that presentation did not as of the date
10 of this document include tangible products, did it?

11 MR. KAPLAN: Objection. Vague and ambiguous.

12 THE WITNESS: It might have.

13 BY MR. WEST:

14 Q In this document -- and we're going to be
15 going through the litany of items again, but not the
16 entire litany. The objection is noted with regards to
17 counsel's objection of the documents speaks for itself?

18 MR. KAPLAN: Thank you.

19 BY MR. WEST:

20 Q Nowhere in the documents does it reference
21 leather backpacks, does it?

22 A I'm sorry. Can you repeat that?

23 Q Nowhere in the documents is there reference to
24 leather backpacks?

25 A No.

1 Q Nowhere in the document is there reference to
2 leather suitcases?

3 A No, but again, this is a rough presentation.

4 Q Nowhere in the document is there reference to
5 leather key chains, correct?

6 A Correct.

7 Q And nowhere in the document is there reference
8 to leather pouches?

9 A I'm not sure if this is a pouch or clutch bag
10 in one of the pictures here.

11 Q Which picture are you referencing?

12 A Where the purses are, the first page of
13 pictures.

14 Q Indicated as HC00065?

15 A Correct.

16 Q Which item do you believe is a pouch?

17 A I can't see if it's a clutch or type of pouch.
18 The one with the skeletons on them.

19 Q Okay. Turning now to Applicant's Exhibit 5.
20 And the date on this document is May 24, 2010, correct?

21 A Correct.

22 Q And subject to objection by counsel again
23 that's previously been noted, nowhere in the document
24 does it reference or depict leather backpacks, correct?

25 A Correct.

1 Q Or leather suitcases?

2 A Correct.

3 Q Nor leather key chains?

4 A Correct.

5 Q Nor leather traveling bags?

6 A That I'm not sure. Depending on where you
7 define traveling bags because handbags are like
8 traveling bags, so I don't know.

9 Q Now you believe traveling bags and handbags
10 are the same goods?

11 A There are some that can be. I'm not saying
12 that they are here. Some that can be.

13 Q Turning now to what is listed as Opposer's
14 Exhibit G and identically as Applicant's Exhibit 6. The
15 date of commencement of this term sheet is January 1st,
16 2010, correct?

17 A Correct.

18 MR. KAPLAN: Let me just note for the record,
19 there's two attachments to Exhibit G that were not
20 part of Exhibit 6.

21 MR. WEST: I don't really need those for the
22 moment. I just need the document itself so we can
23 either pull those -- we can use Exhibit G.

24 MR. KAPLAN: That's fine. So Exhibit G and
25 Exhibit 6 are not identical. There are two

1 additional pages in our Opposer's Exhibit G.

2 (Opposer's Exhibit G was marked for
3 identification.)

4 BY MR. WEST:

5 Q Looking at the document titled Hard Candy
6 licensing term sheet. The commencement term is January
7 1st, 2010, correct?

8 A Correct.

9 Q And the document is not executed by both
10 parties until the later date of 8/17/2010, correct?

11 A It wasn't signed until then.

12 Q It was signed on 8/17/2010, correct?

13 A Correct.

14 Q All right. Was there a subsequent formal
15 license agreement created?

16 A I would have to check with Nu World. I
17 believe they might have had something. I'm not sure.
18 I'm not sure.

19 Q And looking at this document, and subject to
20 counsel's noted ongoing objection, the document does not
21 reference leather backpacks, correct?

22 A Correct.

23 Q Nor leather suitcases?

24 A Correct.

25 Q Nor leather wallets?

1 A Correct.

2 Q Nor leather cases?

3 A It does say cosmetic cases, so that could
4 be --

5 Q But the document does not specify material,
6 correct?

7 A Correct.

8 Q Nor leather key chains?

9 A Correct.

10 Q And now turning to Applicant's Exhibit No. 7.

11 A Okay.

12 Q The date on this document is August 2nd, 2011
13 correct?

14 A Correct.

15 Q And previously you testified you didn't begin
16 sales or production of these items until 2013, correct?

17 A Correct.

18 MR. KAPLAN: You still there?

19 BY MR. WEST:

20 Q I haven't heard an answer.

21 A Oh, I said correct.

22 Q I'm sorry, I didn't hear that if you did say
23 it. At the earliest, the first date of production of
24 these items would be January 1st, 2013, correct?

25 A Yes.

1 Q Turning now to Applicant's Exhibit 8.

2 MR. KAPLAN: Hold on one second.

3 (Pause.) We're waiting for you right, Stuart?

4 MR. WEST: I thought you said hold on a
5 second.

6 BY MR. KAPLAN:

7 Q Just confirming the date on the document
8 August 3rd, 2011?

9 A Correct.

10 Q And turning to Exhibit 9 from applicant. The
11 date on that document is October 19, 2011?

12 A Correct.

13 Q And the rough translation of the Spanish text
14 at the start indicates that these are Photoshop only
15 items, correct?

16 A It was simple Photoshop to tell us where the
17 location of the logo would go.

18 Q So the products do not exist in tangible form,
19 correct?

20 A The product -- the product did, but the
21 logo -- he was moving around the logo to show me which
22 place to put the logo.

23 Q So the product as depicted did not exist in
24 tangible form?

25 MR. KAPLAN: Objection. Vague and ambiguous.

1 THE WITNESS: Correct.

2 BY MR. WEST:

3 Q Do you understand the question?

4 A Can you repeat it?

5 Q I will restate. The product that's depicted
6 on the page HC000095 did not at the time of this e-mail
7 exist in tangible form, correct?

8 MR. KAPLAN: Vague and ambiguous.

9 THE WITNESS: Correct.

10 BY MR. WEST:

11 Q And I just have a few more items for you.
12 Turning to Opposer's -- Applicant's Exhibit 10. I just
13 want to confirm the date as October 8, 2012?

14 A No. November 8, 2012.

15 Q I apologize. November 8, 2012. Yes, I have
16 confirmation, November 8, 2012?

17 A I'm sorry?

18 Q I'm just confirming that the date on the top
19 of the document is November 8, 2012?

20 A Correct.

21 Q I'm sorry. Did I get an answer?

22 MR. KAPLAN: Yes.

23 MR. WEST: I didn't hear an answer. Nothing
24 was audible on this end.

25 MR. KAPLAN: Ms. Reporter, can you read back

1 the answer for counsel?

2 (Thereupon, a portion of the record
3 Was read back by the reporter.)

4 BY MR. WEST:

5 Q Thank you. Turning to Applicant's Exhibit 11,
6 I'm confirming dates once again. This is an e-mail
7 stream beginning November of 1, 2012 ending November 19,
8 2012?

9 A Did you say November 1st? What was the date
10 you said? I'm sorry.

11 Q November 1st, 2012 to November 19, 2012.

12 A That's correct.

13 Q Then turning to Applicant's Exhibit 12,
14 confirming the date on this as July 29 and July 30,
15 2012?

16 A Correct.

17 Q All right. At the rear of the document you
18 have something marked as weekly recap, correct?

19 A Yes.

20 Q Is it the policy of Hard Candy to keep weekly
21 recap with regards to sales?

22 A No.

23 Q So you do not generally keep written
24 documentation of sales meetings?

25 A No.

1 Q Right.

2 A There is no sales meeting every week.

3 Q So it is the policy to keep a weekly recap
4 document?

5 A No.

6 Q No?

7 A No.

8 Q Thank you. Finally, I believe this is
9 Applicant's Exhibit 13. When was this document created?

10 A I would have to get back to you the date. I
11 can find out the date; trying to see if it's here.

12 Q And this document only shows artistic
13 renderings of product, not tangible products, correct?

14 A They were samples made of some of the
15 products.

16 Q The document itself only shows artistic
17 renderings, not actual product though, correct?

18 A It appears.

19 Q And just a few more moments of your time.
20 Turning to Opposer's Exhibit H.

21 MR. KAPLAN: Hold on one second. We've got to
22 backtrack. Oh, Opposer's Exhibit H. I apologize.

23 MR. WEST: At least we have letters and
24 numbers and not the same numbers.

25 THE WITNESS: Okay.

1 BY MR. WEST:

2 Q Do you recognize that photograph?

3 A Yes.

4 Q And what is it?

5 A It's a setup of a showroom of various Hard
6 Candy products.

7 Q In that photograph are there any leather
8 backpacks depicted?

9 A To be honest, the black-and-white photocopy, I
10 really can't answer that question.

11 Q Are there any leather suitcases depicted or
12 suitcases of any type?

13 A I really can't see through the picture. It's
14 all black and white.

15 MR. WEST: Counsel, would you like us to
16 recess and we can send over a color image?

17 MR. KAPLAN: No.

18 MR. WEST: It's like your witness is going to
19 continue testifying that he doesn't know.

20 MR. KAPLAN: I don't think that was what he
21 was testifying about. I don't think that's what
22 his testimony was, but if you want to ask him more
23 questions, feel free.

24 MR. WEST: I think we'll actually take the
25 opportunity to recess and send you a color exhibit

1 so we can get clarity on the answer.

2 MR. KAPLAN: Up to you.

3 MR. WEST: Okay. We'll call you back in under
4 five minutes.

5 MR. KAPLAN: Okay.

6 MR. WEST: Thank you.

7 (A brief recess was taken.)

8 MR. KAPLAN: We're on.

9 BY MR. WEST:

10 Q Okay. So looking at the color photograph that
11 you now have as Opposer's Exhibit H, can you -- hello?

12 A Yes, I'm here.

13 Q Okay. We got some indication that it was like
14 a dead line.

15 MR. KAPLAN: No, we're all alive.

16 MR. WEST: No. We got a fax busy signal for a
17 second.

18 BY MR. WEST:

19 Q In any event, restating the question. Looking
20 now at Opposer's Exhibit H, the color image of the
21 display, can you identify any leather backpacks shown in
22 the image?

23 A No.

24 Q How about any leather suitcases?

25 A No.

1 Q Leather cases?

2 A No.

3 Q No. Leather key chains?

4 A No.

5 Q Leather traveling bags?

6 A No. But let me just tell you, this is a
7 picture of part of a showroom that doesn't show all the
8 products.

9 MR. WEST: Objection. Narrative answer, not
10 responsive.

11 MR. KAPLAN: I don't think --

12 MR. WEST: Move to strike.

13 MR. KAPLAN: I object to the objection.
14 Counsel can't object to the answer.

15 MR. WEST: Counsel can when it's not
16 responsive and move to strike.

17 MR. KAPLAN: Well, you can move to strike, but
18 it's not an objection. It's a motion.

19 MR. WEST: Move to strike anything further
20 than no currently that are not shown.

21 MR. KAPLAN: Do you have another question?

22 BY MR. WEST:

23 Q When was this image taken?

24 A I don't remember the date.

25 Q Do you remember the year?

1 A I'm not a hundred percent sure.

2 Q Was it before or after 2009?

3 A I believe it's after 2009.

4 Q Was it after March 23rd -- 26, 2009?

5 A I believe so.

6 Q Just a few more questions and I will be done.

7 Earlier in your testimony you stated that you first
8 shipped to Walmart in 2008, correct?

9 A I believe so.

10 Q Those first shipments did not include leather
11 backpacks, did they?

12 A No.

13 Q They did not include leather bags?

14 A No.

15 Q They did not include leather suitcases?

16 A No.

17 Q Leather wallets?

18 A No.

19 Q Leather cases?

20 A No.

21 Q Leather handbags?

22 A No.

23 Q Leather key chains?

24 A No.

25 Q Leather pouches?

1 A No.

2 Q Traveling bags?

3 A No.

4 Q And those first shipments to Walmart in 2008
5 did not include purses, correct?

6 A Correct.

7 Q Two more questions for you. You indicated
8 previously that you spoke with someone in at
9 HardCandy -- HardCandy Cases with regards to some type
10 of minimal loyalty license agreement, correct?

11 A Correct.

12 Q But you don't remember who you spoke with?

13 A I do not.

14 Q You don't remember when you spoke with them,
15 correct?

16 A No. I don't remember the year, no, or the
17 date.

18 Q You do remember the date?

19 A No, I do not remember the date.

20 Q And you have no written notes with regards to
21 that correspondence or communication?

22 A No.

23 Q Did you say you remember the year in which you
24 spoke to HardCandy Cases, someone from HardCandy Cases?

25 A I honestly don't remember the date, no.

1 Q I didn't ask the date. I asked if you
2 remember the year.

3 A I do not remember the year.

4 Q Thank you. Just one final question and I will
5 be done. All the documents that we have looked at, both
6 Opposer's exhibits and Applicant's exhibit during this
7 testimony, there was only one document that exists prior
8 to 3/26/2009, correct?

9 A All the documents -- can you repeat that
10 again?

11 Q All the documents that we have looked at
12 during the entire testimony, there is only one document
13 that existed prior to 3/26/2009, correct?

14 A Do you want me to go through all of them and
15 check? I don't remember the dates off the top of my
16 head.

17 MR. KAPLAN: I object as well. The document
18 speaks for itself.

19 BY MR. WEST:

20 Q Let's put it this way. The only document
21 produced during -- the only document referenced during
22 this testimonial deposition is marked as Opposer's
23 Exhibit D and that's the only document that existed
24 prior to 3/26/2009?

25 MR. KAPLAN: I object. It's vague and

1 ambiguous and I think you are mischaracterizing the
2 testimony. You may want to rephrase, but up to
3 you.

4 BY MR. WEST:

5 Q Of all documents that were presented to
6 Mr. Falic during his testimonial deposition today, only
7 one document bears a date earlier than 3/26/2009,
8 correct?

9 MR. KAPLAN: Again, I object. The documents
10 speak for themselves.

11 THE WITNESS: With regards to the document, I
12 don't know.

13 MR. KAPLAN: You can answer his question if
14 you recall.

15 THE WITNESS: Again, I would have to go
16 through all the documents and look at the dates.
17 Is that what you want me to do?

18 MR. WEST: If you would.

19 THE WITNESS: Do you have them?

20 MR. KAPLAN: We're going to have to adjourn
21 then. I don't have all of the documents in the
22 order they were marked. I have been separating
23 them out as you went through them.

24 MR. WEST: I understand. That's fine. How
25 much time would you like?

1 MR. KAPLAN: I think it's going to take me a
2 day.

3 MR. WEST: A day?

4 MR. KAPLAN: It's up to you. I mean, do you
5 really need this? He's got -- we've been through
6 all the documents that are dated what they are
7 dated. Okay. Let me hand the witness Exhibit 1.
8 Let me hand the witness Exhibit 2. Actually, you
9 know, we're not going to do this. If you've got
10 another question, why don't you ask it, but he's
11 not going to go back through all the documents and
12 tell you what the dates are. We've already
13 answered those questions in detail. The record,
14 you know, is clear on this.

15 MR. WEST: Okay. To make it clear for the
16 record, you are declining -- you are instructing
17 your witness not to answer the question?

18 MR. KAPLAN: No. He's just not in a position
19 to go back and review all the exhibits right now.

20 MR. WEST: So can you state your objection
21 clearly for the record then?

22 MR. KAPLAN: He doesn't have the exhibits in
23 front of him.

24 MR. WEST: He doesn't have the exhibits in
25 front of him is the objection?

1 MR. KAPLAN: Right.

2 MR. WEST: All right.

3 MR. KAPLAN: If you want to refer him to a
4 specific exhibit, then he can certainly have that
5 in front of him.

6 MR. WEST: No. My question stands as posed.
7 (Pause.) I have no further questions then if the
8 witness is not going to answer that question.

9 MR. KAPLAN: Okay. I have some redirect.

10 MR. WEST: Go ahead. Do you want time to
11 prepare?

12 MR. KAPLAN: No, I'm fine.

13 REDIRECT EXAMINATION

14 BY MR. KAPLAN:

15 Q Let me hand you what was marked as Opposer's
16 Exhibit C. You were questioned by counsel with respect
17 to the goods and services listed on that exhibit. Do
18 you see that?

19 A Yes.

20 Q Okay. Now counsel asked you some very narrow
21 questions about whether certain of these goods were
22 expressly listed in various of the documents. Do you
23 recall those questions?

24 A Yes.

25 Q Let me ask you a slightly broader question. I

1 want to know which of the goods listed in this document
2 you discussed with the companies and the individuals
3 that were identified in the documents and in your
4 testimony and let's take it in stages. First with
5 Beanstalk, which of the goods referenced in Exhibit C
6 did you specifically discuss with Beanstalk's
7 representative?

8 A Again, to go back to specifics we talked about
9 the lifestyle brand and we talked about handbags or
10 leather goods. In this case over here with this
11 document, you don't -- it's not specifically -- you
12 don't talk specifically a leather pouch or a suitcase.
13 We talked in more broader terms. Like, for example,
14 when you say leather goods, leather cases, leather
15 handbags, that's a part of all in the same. Then you
16 can expand on to and make backpacks and suitcases, so
17 on.

18 Q So when you as the CEO of Hard Candy use the
19 term leather goods, did you have an understanding
20 whether it included backpacks, suitcases, key chains,
21 pouches and travel bags?

22 A Can you repeat that?

23 Q Sure. When you as the CEO of Hard Candy used
24 the term leather goods, did you have an understanding
25 whether it included backpacks, suitcases, key chains,

1 pouches and travel bags?

2 A Yeah. You assume that, yeah.

3 Q And that was your -- well, let me ask the
4 question this way. When you signed the trademark
5 application in March of 2009, was it Hard Candy's intent
6 to include leather backpacks, suitcases, key chains,
7 pouches and traveling bags within the line of products
8 it intended to develop under the Hard Candy mark?

9 A Yes.

10 Q When you discussed the development --
11 MR. WEST: I didn't hear an audible answer.

12 THE WITNESS: Yes.

13 BY MR. KAPLAN:

14 Q When you discussed the development of the
15 product line with Beanstalk and the entry into a license
16 agreement, was it Hard Candy's intent to include within
17 that line leather backpacks, suitcases, key chains,
18 pouches and travel bags?

19 A Yes.

20 Q When you discussed the development of the line
21 Allegro, was it Hard Candy's intent to include leather
22 pouches, suitcases, key chains, pouches and travel bags
23 as part of the product line to be developed?

24 A Yes.

25 Q When you discussed the development of the

1 product line with Nu World, was it Hard Candy's intent
2 to include leather backpacks, suitcases, key chains,
3 pouches and travel bags as part of the product line to
4 be developed?

5 A Yes.

6 Q When you discussed the product line with
7 representatives of Walmart at various times, was it Hard
8 Candy's intent to include leather backpacks, suitcases,
9 key chains, pouches and traveling bags within that
10 product line?

11 A Yes.

12 Q Looking back at Exhibit C and the list of
13 products included on that list?

14 MR. WEST: I'm sorry. I didn't hear the
15 exhibit number.

16 MR. KAPLAN: Opposer's Exhibit C.

17 MR. WEST: Okay.

18 BY MR. KAPLAN:

19 Q Is that an accurate statement of the products
20 that Hard Candy intended to use in connection with
21 its -- with its Hard Candy brand from the time that the
22 applicant was filed in 2009 until the present?

23 A Yes.

24 Q Has Hard Candy at any time decided that it no
25 longer intends to use its brand or its mark in

1 connection with the products listed in Opposer's Exhibit
2 C?

3 A No.

4 Q Why do the earlier in time samples and
5 pictures that we look at show some of the products
6 listed on Exhibit C and not others?

7 MR. WEST: Objection, vague.

8 BY MR. KAPLAN:

9 Q You can answer.

10 A When you present a product line and you go to
11 Walmart, you don't necessarily have to take them all of
12 the samples or all of the pictures. You give them an
13 idea of what you want to create. For example, like we
14 did, we had different leather handbags or small leather
15 goods of various items. It doesn't mean we have to go
16 and create pictures of suitcases and backpacks. Those
17 are all extensions and part of the line. We can discuss
18 them. We don't have to make a rendering of every single
19 product that we are going to offer. We give them an
20 idea of the brand.

21 Q Take a look at the color version of the
22 Exhibit H, Opposer's Exhibit H. I recall from your
23 testimony on cross that you made some mention of this
24 photograph being incomplete. What do you mean by that?

25 A It doesn't necessarily have in the photograph

1 all of the items that we currently sell. Just like we
2 have cosmetic bags in Walmart, we have optical glasses
3 in Walmart. I don't see them in the picture either.

4 Q Were there other products shown at this time
5 that are not included within the picture?

6 A There could be.

7 Q Let me hand you Exhibit 2 one more time.
8 That's the trademark application serial number 77700557
9 that you executed, sir?

10 A Yes.

11 Q On March 26, 2009, correct?

12 A Correct.

13 Q At the time that you executed this and it was
14 filed, did Hard Candy intend to use its mark in
15 connection with leather backpacks?

16 A It's part of the leather goods, so, yes.

17 Q Okay. At the time you executed this
18 application, did Hard Candy intend to use its mark in
19 connection with leather suitcases?

20 A Yes.

21 Q At the time you executed this application, did
22 Hard Candy intend to use its mark in connection with key
23 chains?

24 A Yes.

25 Q And any leather key chains?

1 A Yes.

2 Q You understand that every time I've mentioned
3 the products; suitcases, key chains, pouches and
4 traveling bags, I was referring to leather?

5 A Correct.

6 Q At the time you signed this trademark
7 application and it was filed, did Hard Candy intend to
8 use its mark in connection with leather pouches?

9 A Yes.

10 Q At the time you executed this trademark
11 application and it was filed, did Hard Candy intend to
12 use its mark in connection with traveling bags?

13 A Yes.

14 Q At any time since your execution of this
15 application and its filing, has Hard Candy at any time
16 decided it no longer intends to use its mark in
17 connection with leather backpacks, suitcases, key
18 chains, pouches or traveling bags?

19 A No.

20 MR. KAPLAN: I have no further questions. All
21 right. We will order the transcript. We would
22 also like an opportunity to read. And, Mr. West,
23 you said you wanted a copy?

24 MR. WEST: Just an electronic copy is all we
25 need.

1 MR. KAPLAN: What do you want us to do about
2 the exhibits. Do you want us to provide PDF
3 copies?

4 MR. WEST: That's fine. Perfect.

5 - - -

6 (Thereupon, the deposition was concluded.)

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1 THE STATE OF FLORIDA)

2 COUNTY OF DADE)

3

4 I, the undersigned authority, certify that the
5 aforementioned witness personally appeared before me
6 and was duly sworn.

7

8 WITNESS my hand and official seal this 12th
9 day of February 2014.

10

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Sharon Ambersley, CCR
Notary Public - State of Florida
My Commission: EE190825
My Commission Expires: 07/06/16

C E R T I F I C A T E

THE STATE OF FLORIDA)

COUNTY OF DADE)

I, Sharon Ambersley, Certified Court Reporter, State of Florida at large, do hereby certify that I was authorized to and did report said deposition in stenotype; and that the foregoing pages, numbered from 1 to 82, inclusive, are a true and correct transcription of my shorthand notes of said deposition.

I further certify that said deposition was taken at the time and place hereinabove set forth and that the taking of said deposition was commenced and completed as hereinabove set out.

I further certify that I am not attorney or counsel of any of the parties, nor am I a relative or employee of any attorney or counsel of party connected with the action, nor am I financially interested in the action.

The foregoing certification of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or direction of the certifying reporter.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of February 2014.

Sharon Ambersley, CCR
Notary Public - State of Florida
My Commission: EE190825
My Commission Expires: 07/06/16

1 DATE: February 25, 2014
2 TO: JEROME FALIC
3 c/o Kevin C. Kaplan, Esquire
4 2699 South Bayshore Drive
5 Penthouse
6 Miami, FL 33133
7 IN RE: HARDCANDY CASES, LLC VS. HARD CANDY, LLC
8 CASE NO.: Application Nos. 77700559 & 77700557
9 Opposition No. 91195327

10 Please take notice that on Wednesday, the 12th
11 of February 2014, you gave your deposition in the
12 above-referred matter. At that time, you did not
13 waive signature. It is now necessary that you sign
14 your deposition.

15 Please call our office at the below-listed
16 number to schedule an appointment between the hours
17 of 9:00 a.m. and 4:30 p.m., Monday through Friday,
18 at 44 West Flagler Street, Suite 300, Miami, Florida
19 33130.

20 If you do not read and sign the deposition
21 within a reasonable time, the original, which has
22 already been forwarded to the ordering attorney, may
23 be filed with the Clerk of the Court. If you wish
24 to waive your signature, sign your name in the blank
25 at the bottom of this letter and return it to us.

Very truly yours,
NETWORK REPORTING CORPORATION.

Sharon Ambersley

I do hereby waive my signature:

JEROME FALIC

cc via transcript: Kevin C. Kaplan, Esq.
 Stuart West, Esq.
file copy

C E R T I F I C A T E

- - -

THE STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

I hereby certify that I have read the foregoing deposition by me given, and that the statements contained herein are true and correct to the best of my knowledge and belief, with the exception of any corrections or notations made on the errata sheet, if one was executed.

Dated this ____ day of _____,
2014.

JEROME FALIC

E R R A T A S H E E T

IN RE: HARDCANDY CASES, LLC VS. HARD CANDY, LLC

DEPOSITION OF: JEROME FALIC

TAKEN: 02/12/2014

DO NOT WRITE ON TRANSCRIPT - ENTER CHANGES HERE

PAGE #	LINE #	CHANGE	REASON
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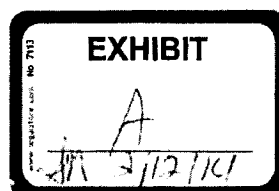
Please forward the original signed errata sheet to this office so that copies may be distributed to all parties.

Under penalty of perjury, I declare that I have read my deposition and that it is true and correct subject to any changes in form or substance entered here.

DATE: _____

SIGNATURE OF DEPONENT: _____

Opposer's Exhibit A



Trademark/Service Mark Application, Principal Register

Serial Number: 77700557

Filing Date: 03/27/2009

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77700557
MARK INFORMATION	
*MARK	<u>HARD CANDY</u>
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	HARD CANDY
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Hard Candy, LLC
*STREET	6100 Hollywood Blvd. 7th Floor
*CITY	Hollywood
*STATE (Required for U.S. applicants)	Florida
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	33024
LEGAL ENTITY INFORMATION	
TYPE	limited liability company
STATE/COUNTRY WHERE LEGALLY ORGANIZED	Florida
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	018

*IDENTIFICATION	leather goods; purses
FILING BASIS	SECTION 1(b)
ADDITIONAL STATEMENTS SECTION	
PRIOR REGISTRATION(S)	The applicant claims ownership of U.S. Registration Number(s) 2666792, 1987262, 2343732, and others.
ATTORNEY INFORMATION	
NAME	Manuel Valcarcel, Esq.
ATTORNEY DOCKET NUMBER	063156.010101
FIRM NAME	Greenberg Traurig, P.A.
STREET	1221 Brickell Avenue
CITY	Miami
STATE	Florida
COUNTRY	United States
ZIP/POSTAL CODE	33131
PHONE	3055790812
FAX	3059615812
EMAIL ADDRESS	ipmiami@gtlaw.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
CORRESPONDENCE INFORMATION	
NAME	Manuel Valcarcel, Esq.
FIRM NAME	Greenberg Traurig, P.A.
STREET	1221 Brickell Avenue
CITY	Miami
STATE	Florida
COUNTRY	United States
ZIP/POSTAL CODE	33131
PHONE	3055790812
FAX	3059615812
EMAIL ADDRESS	ipmiami@gtlaw.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes

FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE DUE	325
*TOTAL FEE PAID	325
SIGNATURE INFORMATION	
SIGNATURE	/jerome falic/
SIGNATORY'S NAME	Jerome Falic
SIGNATORY'S POSITION	Chief Executive Officer
DATE SIGNED	03/26/2009

Trademark/Service Mark Application, Principal Register

Serial Number: 77700557

Filing Date: 03/27/2009

To the Commissioner for Trademarks:

MARK: HARD CANDY (Standard Characters, see mark)

The literal element of the mark consists of HARD CANDY.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Hard Candy, LLC, a limited liability company legally organized under the laws of Florida, having an address of

6100 Hollywood Blvd. 7th Floor

Hollywood, Florida 33024

United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 018: leather goods; purses

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

The applicant claims ownership of U.S. Registration Number(s) 2666792, 1987262, 2343732, and others.

The applicant's current Attorney Information:

Manuel Valcarcel, Esq. of Greenberg Traurig, P.A.

1221 Brickell Avenue

Miami, Florida 33131

United States

The attorney docket/reference number is 063156.010101.

The applicant's current Correspondence Information:

Manuel Valcarcel, Esq.

Greenberg Traurig, P.A.

1221 Brickell Avenue

Miami, Florida 33131

3055790812(phone)

3059615812(fax)

ipmiami@gtlaw.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /jerome falic/ Date Signed: 03/26/2009

Signatory's Name: Jerome Falic

Signatory's Position: Chief Executive Officer

RAM Sale Number: 5237

RAM Accounting Date: 03/27/2009

Serial Number: 77700557

Internet Transmission Date: Fri Mar 27 09:04:36 EDT 2009

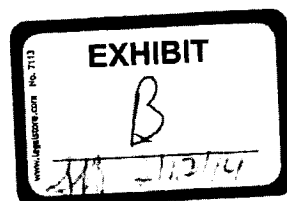
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HARD CANDY

Opposer's Exhibit B



Response to Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77700557
LAW OFFICE ASSIGNED	LAW OFFICE 101
MARK SECTION (no change)	
GOODS AND/OR SERVICES SECTION (current)	
INTERNATIONAL CLASS	018
DESCRIPTION	leather goods; purses
FILING BASIS	Section 1(b)
GOODS AND/OR SERVICES SECTION (proposed)	
INTERNATIONAL CLASS	018
TRACKED TEXT DESCRIPTION	
leather goods; <u>leather goods, namely, backpacks, leather bags, suitcases, wallets, leather cases, leather handbags, leather key chains, leather pouches, traveling bags; purses</u>	
FINAL DESCRIPTION	
leather goods, namely, backpacks, leather bags, suitcases, wallets, leather cases, leather handbags, leather key chains, leather pouches, traveling bags; purses	
FILING BASIS	Section 1(b)
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Manuel Valcarcel/
SIGNATORY'S NAME	Manuel Valcarcel
SIGNATORY'S POSITION	Attorney for Applicant, Florida bar member
DATE SIGNED	12/17/2009
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Thu Dec 17 18:55:11 EST 2009
	USPTO/ROA-69.25.8.138-200

TEAS STAMP

91217185511223398-7770055
7-460a1ed16b4e2b594d7619e
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217184953902847

PTO Form 1957 (Rev 9/2005)
OMB No. 0651-0050 (Exp. 04/30/2011)

Response to Office Action
To the Commissioner for Trademarks:

Application serial no. **77700557** has been amended as follows:

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 018 for leather goods; purses

Original Filing Basis:

Filing Basis: Section 1(b), Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

Proposed:

Tracked Text Description: leather goods; leather goods, namely, backpacks, leather bags, suitcases, wallets, leather cases, leather handbags, leather key chains, leather pouches, traveling bags; purses

Class 018 for leather goods, namely, backpacks, leather bags, suitcases, wallets, leather cases, leather handbags, leather key chains, leather pouches, traveling bags; purses

Filing Basis: Section 1(b), Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

SIGNATURE(S)

Response Signature

Signature: /Manuel Valcarcel/ Date: 12/17/2009

Signatory's Name: Manuel Valcarcel

Signatory's Position: Attorney for Applicant, Florida bar member

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the

applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

Serial Number: 77700557

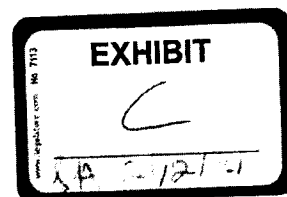
Internet Transmission Date: Thu Dec 17 18:55:11 EST 2009

TEAS Stamp: USPTO/ROA-69.25.8.138-200912171855112233

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47eb8d-N/A-N/A-20091217184953902847

Opposer's Exhibit C





United States Patent and Trademark Office

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HARD CANDY

Word Mark **HARD CANDY**

Goods and Services IC 018. US 001 002 003 022 041. G & S: leather goods, namely, backpacks, leather bags, suitcases, wallets, leather cases, leather handbags, leather key chains, leather pouches, traveling bags; purses

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 77700557

Filing Date March 27, 2009

Current Basis 1B

Original Filing Basis 1B

Published for Opposition February 16, 2010

Owner (APPLICANT) Hard Candy, LLC LIMITED LIABILITY COMPANY FLORIDA 6100 Hollywood Blvd. 7th Floor Hollywood FLORIDA 33024

Attorney of Record Manuel Valcarcel, Esq.

Prior Registrations 1987262;2343732;2666792;AND OTHERS

Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead
Indicator LIVE

TESS HOME	NEW USER	STRUCTURED	FREE FORM	Browse Dict	SEARCH OG	TOP	HELP	PREV LIST	CURR LIST
NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC					

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Opposer's Exhibit D

